

107TH CONGRESS  
1ST SESSION

# H. R. 2632

To amend title XVIII of the Social Security Act to provide Medicare beneficiaries with access to affordable outpatient prescription drugs.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2001

Mr. FOLEY (for himself, Mrs. CAPITO, and Mr. TERRY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to provide Medicare beneficiaries with access to affordable outpatient prescription drugs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Rx Drug Discount and Security Act of 2001”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Voluntary Medicare Outpatient Prescription Drug Discount and Security Program.

“PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG  
DISCOUNT AND SECURITY PROGRAM

“Sec. 1860. Definitions.

“SUBPART 1—ESTABLISHMENT OF VOLUNTARY MEDICARE OUTPATIENT  
PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

“Sec. 1860A. Establishment of program.

“Sec. 1860B. Enrollment.

“Sec. 1860C. Providing enrollment and coverage information to beneficiaries.

“Sec. 1860D. Enrollee protections.

“Sec. 1860E. Annual enrollment fee.

“Sec. 1860F. Benefits under the program.

“Sec. 1860G. Selection of entities to provide prescription drug coverage.

“Sec. 1860H. Payments to eligible entities for administering the catastrophic benefit.

“Sec. 1860I. Determination of income levels.

“Sec. 1860J. Appropriations.

“SUBPART 2—ESTABLISHMENT OF THE MEDICARE PRESCRIPTION DRUG  
AGENCY

“Sec. 1860S. Medicare Prescription Drug Agency.

“Sec. 1860T. Commissioner; Deputy Commissioner; other officers.

“Sec. 1860U. Administrative duties of the Commissioner.

“Sec. 1860V. Medicare Competition and Prescription Drug Advisory Board.”.

Sec. 3. Commissioner as member of the board of trustees of the medicare trust funds.

Sec. 4. Exclusion of part D costs from determination of part B monthly premium.

Sec. 5. Medigap revisions.

1 **SEC. 2. VOLUNTARY MEDICARE OUTPATIENT PRESCRIP-**  
2 **TION DRUG DISCOUNT AND SECURITY PRO-**  
3 **GRAM.**

4 (a) ESTABLISHMENT OF PROGRAM.—Title XVIII of  
5 the Social Security Act (42 U.S.C. 1395 et seq.) is amend-  
6 ed by redesignating part D as part E and by inserting  
7 after part C the following new part:

1 “PART D—VOLUNTARY MEDICARE OUTPATIENT PRE-  
2       SCRIPTION DRUG DISCOUNT AND SECURITY PRO-  
3       GRAM

4                               “DEFINITIONS

5       “SEC. 1860. In this part:

6               “(1) COMMISSIONER.—The term ‘Commis-  
7       sioner’ means the Commissioner of Medicare Pre-  
8       scription Drugs appointed under section 1860S(a).

9               “(2) COVERED OUTPATIENT DRUG.—

10               “(A) IN GENERAL.—Except as provided in  
11       subparagraph (B), the term ‘covered outpatient  
12       drug’ means—

13               “(i) a drug that may be dispensed  
14       only upon a prescription and that is de-  
15       scribed in clause (i) or (ii) of subparagraph  
16       (A) of section 1927(k)(2); or

17               “(ii) a biological product or insulin de-  
18       scribed in subparagraph (B) or (C) of such  
19       section.

20               “(B) EXCLUSIONS.—

21               “(i) IN GENERAL.—The term ‘covered  
22       outpatient drug’ does not include drugs or  
23       classes of drugs, or their medical uses,  
24       which may be excluded from coverage or  
25       otherwise restricted under section

1           1927(d)(2), other than those restricted  
 2           under subparagraph (E) of such section  
 3           (relating to smoking cessation agents).

4           “(ii) AVOIDANCE OF DUPLICATE COV-  
 5           ERAGE.—A drug prescribed for an indi-  
 6           vidual that would otherwise be a covered  
 7           outpatient drug under this part shall not  
 8           be considered to be such a drug if payment  
 9           for the drug is available under part A or  
 10          B (but such drug shall be so considered if  
 11          such payment is not available because the  
 12          eligible beneficiary has exhausted benefits  
 13          under part A or B), without regard to  
 14          whether the individual is entitled to bene-  
 15          fits under part A or enrolled under part B.

16          “(3) ELIGIBLE BENEFICIARY.—The term ‘eligi-  
 17          ble beneficiary’ means an individual who is—

18                 “(A) eligible for benefits under part A or  
 19                 enrolled under part B; and

20                 “(B) not eligible for prescription drug cov-  
 21                 erage under a medicaid plan under title XIX.

22          “(4) ELIGIBLE ENTITY.—The term ‘eligible en-  
 23          tity’ means any entity that the Commissioner deter-  
 24          mines to be appropriate to provide the benefits  
 25          under this part, including—

1                   “(A) pharmaceutical benefit management  
2                   companies;

3                   “(B) wholesale and retail pharmacy deliv-  
4                   ery systems;

5                   “(C) insurers;

6                   “(D) Medicare+Choice organizations;

7                   “(E) other entities; or

8                   “(F) any combination of the entities de-  
9                   scribed in subparagraphs (A) through (E).

10                  “(5) POVERTY LINE.—The term ‘poverty line’  
11                  means the income official poverty line (as defined by  
12                  the Office of Management and Budget, and revised  
13                  annually in accordance with section 673(2) of the  
14                  Omnibus Budget Reconciliation Act of 1981) appli-  
15                  cable to a family of the size involved.

16                  “SUBPART 1—ESTABLISHMENT OF VOLUNTARY MEDI-  
17                  CARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT  
18                  AND SECURITY PROGRAM

19                         “ESTABLISHMENT OF PROGRAM

20                  “SEC. 1860A. (a) PROVISION OF BENEFIT.—The  
21                  Commissioner shall establish a Medicare Outpatient Pre-  
22                  scription Drug Discount and Security Program under  
23                  which an eligible beneficiary may voluntarily enroll and re-  
24                  ceive benefits under this part through enrollment with an  
25                  eligible entity with a contract under this part.

1       “(b) PROGRAM TO BEGIN IN 2003.—The Commis-  
 2       sioner shall establish the program under this part in a  
 3       manner so that benefits are first provided for months be-  
 4       ginning with January 2003.

5       “(c) VOLUNTARY NATURE OF PROGRAM.—Nothing  
 6       in this part shall be construed as requiring an eligible ben-  
 7       eficiary to enroll in the program under this part.

8       “(d) FINANCING.—The costs of providing benefits  
 9       under this part shall be payable from the Federal Supple-  
 10      mentary Medical Insurance Trust Fund established under  
 11      section 1841.

12                                   “ENROLLMENT

13      “SEC. 1860B. (a) ENROLLMENT UNDER PART D.—

14                   “(1) ESTABLISHMENT OF PROCESS.—

15                           “(A) IN GENERAL.—The Commissioner  
 16                   shall establish a process through which an eligi-  
 17                   ble beneficiary (including an eligible beneficiary  
 18                   enrolled in a Medicare+Choice plan offered by  
 19                   a Medicare+Choice organization) may make an  
 20                   election to enroll under this part. Except as  
 21                   otherwise provided in this subsection, such  
 22                   process shall be similar to the process for en-  
 23                   rollment under part B under section 1837.

24                           “(B) REQUIREMENT OF ENROLLMENT.—

25                   An eligible beneficiary must enroll under this

1 part in order to be eligible to receive the bene-  
2 fits under this part.

3 “(2) ENROLLMENT PERIODS.—

4 “(A) IN GENERAL.—Except as provided  
5 under subparagraph (B) or (C), an eligible ben-  
6 eficiary may not enroll in the program under  
7 this part during any period after the bene-  
8 ficiary’s initial enrollment period under part B  
9 (as determined under section 1837).

10 “(B) SPECIAL ENROLLMENT PERIOD.—In  
11 the case of eligible beneficiaries that have re-  
12 cently lost eligibility for prescription drug cov-  
13 erage under a medicaid plan under title XIX,  
14 the Commissioner shall establish a special en-  
15 rollment period in which such beneficiaries may  
16 enroll under this part.

17 “(C) OPEN ENROLLMENT PERIOD IN 2003  
18 FOR CURRENT BENEFICIARIES.—The Commis-  
19 sioner shall establish a period, which shall begin  
20 on the date on which the Commissioner first be-  
21 gins to accept elections for enrollment under  
22 this part and shall end on December 31, 2003,  
23 during which any eligible beneficiary may—

24 “(i) enroll under this part; or

1 “(ii) enroll or re-enroll under this part  
2 after having previously declined or termi-  
3 nated such enrollment.

4 “(3) PERIOD OF COVERAGE.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B) and subject to subparagraph  
7 (C), an eligible beneficiary’s coverage under the  
8 program under this part shall be effective for  
9 the period provided under section 1838, as if  
10 that section applied to the program under this  
11 part.

12 “(B) ENROLLMENT DURING OPEN AND  
13 SPECIAL ENROLLMENT.—Subject to subpara-  
14 graph (C), an eligible beneficiary who enrolls  
15 under the program under this part under sub-  
16 paragraph (B) or (C) of paragraph (2) shall be  
17 entitled to the benefits under this part begin-  
18 ning on the first day of the month following the  
19 month in which such enrollment occurs.

20 “(C) LIMITATION.—Coverage under this  
21 part shall not begin prior to January 1, 2003.

22 “(4) PART D COVERAGE TERMINATED BY TER-  
23 MINATION OF COVERAGE UNDER PARTS A AND B OR  
24 ELIGIBILITY FOR MEDICAL ASSISTANCE.—

“(A) IN GENERAL.—In addition to the causes of termination specified in section 1838, the Commissioner shall terminate an individual’s coverage under this part if the individual is—

“(i) no longer enrolled in part A or B;  
or

“(ii) eligible for prescription drug coverage under a medicaid plan under title XIX.

“(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of—

“(i) the termination of coverage under part A or (if later) under part B; or

“(ii) the coverage under title XIX.

“(b) ENROLLMENT WITH ELIGIBLE ENTITY.—

“(1) PROCESS.—

“(A) IN GENERAL.—The Commissioner shall establish a process through which an eligible beneficiary who is enrolled under this part shall make an annual election to enroll with any eligible entity that has been awarded a contract under this part and serves the geographic area in which the beneficiary resides.

1           “(B) RULES.—In establishing the process  
2           under subparagraph (A), the Commissioner  
3           shall use rules similar to the rules for enroll-  
4           ment and disenrollment with a  
5           Medicare+Choice plan under section 1851 (in-  
6           cluding the special election periods under sub-  
7           section (e)(4) of such section).

8           “(2) MEDICARE+CHOICE ENROLLEES.—An eli-  
9           gible beneficiary who is enrolled under this part and  
10          enrolled in a Medicare+Choice plan offered by a  
11          Medicare+Choice organization must enroll with an  
12          eligible entity in order to receive benefits under this  
13          part. The beneficiary may elect to receive such bene-  
14          fits from the Medicare+Choice organization in  
15          which the beneficiary is enrolled if the organization  
16          has been awarded a contract under this part.

17          “(3) COMPETITION.—Eligible entities with a  
18          contract under this part shall compete for bene-  
19          ficiaries on the basis of discounts, formularies, phar-  
20          macy networks, and other services provided for  
21          under the contract.

22          “(c) ENROLLMENT PERIOD FOR BENEFITS IN  
23          2003.—The processes developed under subsections (a) and  
24          (b) shall ensure that eligible beneficiaries are permitted  
25          to enroll under this part and with an eligible entity prior

1 to January 1, 2003, in order to ensure that coverage  
2 under this part is effective as of such date.

3 “PROVIDING ENROLLMENT AND COVERAGE INFORMATION  
4 TO BENEFICIARIES

5 “SEC. 1860C. (a) ACTIVITIES.—The Commissioner  
6 shall provide for activities under this part to broadly dis-  
7 seminate information to eligible beneficiaries (and pro-  
8 spective eligible beneficiaries) regarding enrollment under  
9 this part and the prescription drug coverage made avail-  
10 able by eligible entities with a contract under this part.

11 “(b) SPECIAL RULE FOR FIRST ENROLLMENT  
12 UNDER THE PROGRAM.—To the extent practicable, the  
13 activities described in subsection (a) shall ensure that eli-  
14 gible beneficiaries are provided with such information at  
15 least 60 days prior to the first enrollment period described  
16 in section 1860B(c).

17 “ENROLLEE PROTECTIONS

18 “SEC. 1860D. (a) GUARANTEED ISSUE AND NON-  
19 DISCRIMINATION.—

20 “(1) GUARANTEED ISSUE.—

21 “(A) IN GENERAL.—An eligible beneficiary  
22 who is eligible to enroll with an eligible entity  
23 under section 1860B(b) for prescription drug  
24 coverage under this part at a time during which  
25 elections are accepted under this part with re-  
26 spect to the coverage shall not be denied enroll-

ment based on any health status-related factor (described in section 2702(a)(1) of the Public Health Service Act) or any other factor.

“(B) ~~MEDICARE+CHOICE~~ LIMITATIONS PERMITTED.—The provisions of paragraphs (2) and (3) (other than subparagraph (C)(i), relating to default enrollment) of section 1851(g) (relating to priority and limitation on termination of election) shall apply to eligible entities under this subsection.

“(2) NONDISCRIMINATION.—An eligible entity offering prescription drug coverage under this part shall not establish a service area in a manner that would discriminate based on health or economic status of potential enrollees.

“(b) DISSEMINATION OF INFORMATION.—

“(1) GENERAL INFORMATION.—An eligible entity with a contract under this part shall disclose, in a clear, accurate, and standardized form to each eligible beneficiary enrolled for prescription drug coverage with such entity under this part at the time of enrollment and at least annually thereafter, the information described in section 1852(c)(1) relating to such prescription drug coverage. Such information includes the following:

1           “(A) Access to covered outpatient drugs,  
2           including access through pharmacy networks.

3           “(B) How any formulary used by the eligi-  
4           ble entity functions.

5           “(C) Grievance and appeals procedures.

6           “(2) DISCLOSURE UPON REQUEST OF GENERAL  
7           COVERAGE, UTILIZATION, AND GRIEVANCE INFORMA-  
8           TION.—Upon request of an eligible beneficiary, the  
9           eligible entity shall provide the information described  
10          in section 1852(c)(2) (other than subparagraph (D))  
11          to such beneficiary.

12          “(3) RESPONSE TO BENEFICIARY QUESTIONS.—  
13          Each eligible entity offering prescription drug cov-  
14          erage under this part shall have a mechanism for  
15          providing specific information to enrollees upon re-  
16          quest. The entity shall make available, through an  
17          Internet website and in writing upon request, infor-  
18          mation on specific changes in its formulary.

19          “(c) ACCESS TO COVERED BENEFITS.—

20               “(1) ENSURING PHARMACY ACCESS.—

21                   “(A) IN GENERAL.—Each eligible entity  
22                   with a contract under this part shall permit any  
23                   pharmacy located in the area covered by such  
24                   contract to participate in the pharmacy network  
25                   of the eligible entity if the pharmacy agrees to

1 accept such operating terms as the eligible enti-  
2 ty may specify, including any fee schedule, re-  
3 quirements relating to covered expenses, and  
4 quality standards relating to the provision of  
5 prescription drug coverage.

6 “(B) CONSTRUCTION.—Nothing in this  
7 paragraph shall be construed as requiring a  
8 pharmacy to participate in a pharmacy network  
9 of an eligible entity with a contract under this  
10 part to participate in any other coverage pro-  
11 gram of the eligible entity.

12 “(2) ACCESS TO NEGOTIATED PRICES FOR PRE-  
13 SCRIPTON DRUGS.—For requirements relating to  
14 the access of an eligible beneficiary to negotiated  
15 prices (including applicable discounts), see section  
16 1860F(a).

17 “(3) REQUIREMENTS ON DEVELOPMENT AND  
18 APPLICATION OF FORMULARIES.—Insofar as an eli-  
19 gible entity with a contract under this part uses a  
20 formulary, the following requirements must be met:

21 “(A) FORMULARY COMMITTEE.—The eligi-  
22 ble entity must establish a pharmaceutical and  
23 therapeutic committee that develops the for-  
24 mulary. Such committee shall include at least 1  
25 physician and at least 1 pharmacist.

1           “(B) INCLUSION OF DRUGS IN ALL THERA-  
2           PEUTIC CATEGORIES.—The formulary must in-  
3           clude drugs within all therapeutic categories  
4           and classes of covered outpatient drugs (al-  
5           though not necessarily for all drugs within such  
6           categories and classes).

7           “(C) APPEALS AND EXCEPTIONS TO APPLI-  
8           CATION.—The entity must have, as part of the  
9           appeals process under subsection (f)(2), a proc-  
10          ess for appeals for denials of coverage based on  
11          such application of the formulary.

12          “(d) COST AND UTILIZATION MANAGEMENT; QUAL-  
13          ITY ASSURANCE; MEDICATION THERAPY MANAGEMENT  
14          PROGRAM.—

15               “(1) IN GENERAL.—For purposes of providing  
16          access to negotiated benefits under section 1860F(a)  
17          and the catastrophic benefit described in section  
18          1860F(b), the eligible entity shall have in place—

19               “(A) an effective cost and drug utilization  
20          management program, including appropriate in-  
21          centives to use generic drugs, when appropriate;

22               “(B) quality assurance measures and sys-  
23          tems to reduce medical errors and adverse drug  
24          interactions, including a medication therapy

1 management program described in paragraph  
2 (2); and

3 “(C) a program to control fraud, abuse,  
4 and waste.

5 “(2) MEDICATION THERAPY MANAGEMENT PRO-  
6 GRAM.—

7 “(A) IN GENERAL.—A medication therapy  
8 management program described in this para-  
9 graph is a program of drug therapy manage-  
10 ment and medication administration provided  
11 by a community-based pharmacy that is de-  
12 signed to ensure that prescription drugs made  
13 available under this part are appropriately used  
14 to achieve therapeutic goals and reduce the risk  
15 of adverse events, including adverse drug inter-  
16 actions.

17 “(B) ELEMENTS.—Such program shall  
18 include—

19 “(i) enhanced beneficiary under-  
20 standing of such appropriate use through  
21 beneficiary education, counseling, and  
22 other appropriate means; and

23 “(ii) increased beneficiary adherence  
24 with prescription medication regimens

1 through medication refill reminders, special  
2 packaging, and other appropriate means.

3 “(C) DEVELOPMENT OF PROGRAM IN CO-  
4 OPERATION WITH LICENSED PHARMACISTS.—  
5 The program shall be developed in cooperation  
6 with licensed pharmacists and physicians.

7 “(D) CONSIDERATIONS IN PHARMACY  
8 FEES.—An eligible entity with a contract under  
9 this part shall establish fees for pharmacists,  
10 pharmacies, and others providing services under  
11 the medication therapy management program  
12 that take into account the resources and time  
13 used in implementing the program.

14 “(3) TREATMENT OF ACCREDITATION.—Section  
15 1852(e)(4) (relating to treatment of accreditation)  
16 shall apply to prescription drug coverage provided  
17 under this part with respect to the following require-  
18 ments, in the same manner as they apply to  
19 Medicare+Choice plans under part C with respect to  
20 the requirements described in a clause of section  
21 1852(e)(4)(B):

22 “(A) Subsection (c)(1) (relating to access  
23 to covered benefits).

24 “(B) Subsection (g) (relating to confiden-  
25 tiality and accuracy of enrollee records).

1       “(e) GRIEVANCE MECHANISM.—Each eligible entity  
2 shall provide meaningful procedures for hearing and re-  
3 solving grievances between the organization (including any  
4 entity or individual through which the eligible entity pro-  
5 vides covered benefits) and eligible beneficiaries enrolled  
6 with the entity under this part in accordance with section  
7 1852(f).

8       “(f) COVERAGE DETERMINATIONS, RECONSIDER-  
9 ATIONS, AND APPEALS.—

10       “(1) IN GENERAL.—An eligible entity shall  
11 meet the requirements of section 1852(g) with re-  
12 spect to covered benefits under the prescription drug  
13 coverage it offers under this part in the same man-  
14 ner as such requirements apply to a  
15 Medicare+Choice organization with respect to bene-  
16 fits it offers under a Medicare+Choice plan under  
17 part C.

18       “(2) APPEALS OF FORMULARY DETERMINA-  
19 TIONS.—Under the appeals process under paragraph  
20 (1) an individual who is enrolled with an eligible en-  
21 tity with a contract under this part for prescription  
22 drug coverage may appeal any denial of coverage of  
23 a prescription drug to obtain coverage for a medi-  
24 cally necessary covered outpatient drug that is not  
25 on the formulary of the eligible entity (established

1 under subsection (c)) if the prescribing physician de-  
 2 termines that the therapeutically similar drug that  
 3 is on the formulary is not effective for the enrollee  
 4 or has significant adverse effects for the enrollee.

5 “(g) CONFIDENTIALITY AND ACCURACY OF EN-  
 6 ROLLEE RECORDS.—An eligible entity shall meet the re-  
 7 quirements of section 1852(h) with respect to enrollees  
 8 under this part in the same manner as such requirements  
 9 apply to a Medicare+Choice organization with respect to  
 10 enrollees under part C.

11 “ANNUAL ENROLLMENT FEE

12 “SEC. 1860E. (a) AMOUNT.—

13 “(1) IN GENERAL.—Except as provided in sub-  
 14 section (c), enrollment under the program under this  
 15 part is conditioned upon payment of an annual en-  
 16 rollment fee of \$25.

17 “(2) ANNUAL PERCENTAGE INCREASE.—

18 “(A) IN GENERAL.—In the case of any cal-  
 19 endar year beginning after 2003, the dollar  
 20 amount in paragraph (1) shall be increased by  
 21 an amount equal to—

22 “(i) such dollar amount; multiplied by

23 “(ii) the inflation adjustment.

24 “(B) INFLATION ADJUSTMENT.—For pur-  
 25 poses of subparagraph (A)(ii), the inflation ad-

1           justment for any calendar year is the percent-  
2           age (if any) by which—

3                   “(i) the average per capita aggregate  
4                   expenditures for covered outpatient drugs  
5                   in the United States for medicare bene-  
6                   ficiaries, as determined by the Commis-  
7                   sioner for the 12-month period ending in  
8                   July of the previous year; exceeds

9                   “(ii) such aggregate expenditures for  
10                  the 12-month period ending with July  
11                  2003.

12               “(C) ROUNDING.—If any increase deter-  
13               mined under clause (ii) is not a multiple of \$1,  
14               such increase shall be rounded to the nearest  
15               multiple of \$1.

16           “(b) COLLECTION OF ANNUAL ENROLLMENT FEE.—

17                   “(1) IN GENERAL.—Unless the eligible bene-  
18                   ficiary makes an election under paragraph (2), the  
19                   annual enrollment fee described in subsection (a)  
20                   shall be collected and credited to the Federal Sup-  
21                   plementary Medical Insurance Trust Fund in the  
22                   same manner as the monthly premium determined  
23                   under section 1839 is collected and credited to such  
24                   Trust Fund under section 1840.

1           “(2) DIRECT PAYMENT.—An eligible beneficiary  
 2           may elect to pay the annual enrollment fee directly  
 3           or in any other manner approved by the Commis-  
 4           sioner. The Commissioner shall establish procedures  
 5           for making such an election.

6           “(c) WAIVER.—The Commissioner shall waive the en-  
 7           rollment fee described in subsection (a) in the case of an  
 8           eligible beneficiary whose income is below 200 percent of  
 9           the poverty line.

10           “BENEFITS UNDER THE PROGRAM

11           “SEC. 1860F. (a) ACCESS TO NEGOTIATED  
 12           PRICES.—

13           “(1) NEGOTIATED PRICES.—

14           “(A) IN GENERAL.—Subject to subpara-  
 15           graph (B), each eligible entity with a contract  
 16           under this part shall provide each eligible bene-  
 17           ficiary enrolled with the entity with access to  
 18           negotiated prices (including applicable dis-  
 19           counts) for such prescription drugs as the eligi-  
 20           ble entity determines appropriate. If such a  
 21           beneficiary becomes eligible for the catastrophic  
 22           benefit under subsection (b), the negotiated  
 23           prices (including applicable discounts) shall con-  
 24           tinue to be available to the beneficiary for those  
 25           prescription drugs for which payment may not  
 26           be made under section 1860H(b). For purposes

1 of this subparagraph, the term ‘prescription  
2 drugs’ is not limited to covered outpatient  
3 drugs, but does not include any over-the-  
4 counter drug that is not a covered outpatient  
5 drug.

6 “(B) LIMITATIONS.—

7 “(i) FORMULARY RESTRICTIONS.—In-  
8 sofar as an eligible entity with a contract  
9 under this part uses a formulary, the nego-  
10 tiated prices (including applicable dis-  
11 counts) for prescription drugs shall only be  
12 available for drugs included in such for-  
13 mulary.

14 “(ii) AVOIDANCE OF DUPLICATE COV-  
15 ERAGE.—The negotiated prices (including  
16 applicable discounts) for prescription drugs  
17 shall not be available for any drug pre-  
18 scribed for an eligible beneficiary if pay-  
19 ment for the drug is available under part  
20 A or B (but such negotiated prices shall be  
21 available if payment under part A or B is  
22 not available because the beneficiary has  
23 not met the deductible or has exhausted  
24 benefits under part A or B).

1           “(2) DISCOUNT CARD.—The Commissioner  
 2           shall develop a uniform standard card format to be  
 3           issued by each eligible entity that may be used by  
 4           an enrolled beneficiary to ensure the access of such  
 5           beneficiary to negotiated prices under paragraph (1).

6           “(3) ENSURING DISCOUNTS IN ALL AREAS.—  
 7           The Commissioner shall develop procedures that en-  
 8           sure that each eligible beneficiary that resides in an  
 9           area where no eligible entity has been awarded a  
 10          contract under this part is provided with access to  
 11          negotiated prices for prescription drugs (including  
 12          applicable discounts).

13          “(b) CATASTROPHIC BENEFIT.—

14                 “(1) IN GENERAL.—Subject to paragraph (4)  
 15                 (relating to eligibility for the catastrophic benefit)  
 16                 and any formulary used by the eligible entity with  
 17                 which the eligible beneficiary is enrolled, the cata-  
 18                 strophic benefit shall be administered as follows:

19                         “(A) BENEFICIARIES WITH ANNUAL IN-  
 20                         COMES BELOW 200 PERCENT OF THE POVERTY  
 21                         LINE.—In the case of an eligible beneficiary  
 22                         whose modified adjusted gross income (as de-  
 23                         fined in paragraph (4)(E)) is below 200 percent  
 24                         of the poverty line, the beneficiary shall not be  
 25                         responsible for making a payment for a covered

1 outpatient drug provided to the beneficiary in  
2 a year to the extent that the out-of-pocket ex-  
3 penses of the beneficiary for such drug, when  
4 added to the out-of-pocket expenses of the bene-  
5 ficiary for covered outpatient drugs previously  
6 provided in the year, exceed \$1,200.

7 “(B) BENEFICIARIES WITH ANNUAL IN-  
8 COMES BETWEEN 200 AND 400 PERCENT OF THE  
9 POVERTY LINE.—In the case of an eligible ben-  
10 eficiary whose modified adjusted gross income  
11 (as so defined) exceeds 200 percent, but does  
12 not exceed 400 percent, of the poverty line, the  
13 beneficiary shall not be responsible for making  
14 a payment for a covered outpatient drug pro-  
15 vided to the beneficiary in a year to the extent  
16 that the out-of-pocket expenses of the bene-  
17 ficiary for such drug, when added to the out-of-  
18 pocket expenses of the beneficiary for covered  
19 outpatient drugs previously provided in the  
20 year, exceed \$2,500.

21 “(C) BENEFICIARIES WITH ANNUAL IN-  
22 COMES ABOVE 400 PERCENT OF THE POVERTY  
23 LINE.—In the case of an eligible beneficiary  
24 whose modified adjusted gross income (as so  
25 defined) exceeds 400 percent of the poverty

1 line, the beneficiary shall not be responsible for  
2 making a payment for a covered outpatient  
3 drug provided to the beneficiary in a year to the  
4 extent that the out-of-pocket expenses of the  
5 beneficiary for such drug, when added to the  
6 out-of-pocket expenses of the beneficiary for  
7 covered outpatient drugs previously provided in  
8 the year, exceed \$5,000.

9 “(2) ANNUAL PERCENTAGE INCREASE.—

10 “(A) IN GENERAL.—In the case of any cal-  
11 endar year after 2003, the dollar amounts in  
12 paragraph (1) shall be increased by an amount  
13 equal to—

14 “(i) such dollar amount; multiplied by

15 “(ii) the inflation adjustment deter-  
16 mined under section 1860E(a)(2)(B) for  
17 such calendar year.

18 “(B) ROUNDING.—If any increase deter-  
19 mined under subparagraph (A) is not a multiple  
20 of \$1, such increase shall be rounded to the  
21 nearest multiple of \$1.

22 “(3) ELIGIBLE ENTITY NOT AT RISK FOR CATA-  
23 STROPHIC BENEFIT.—

24 “(A) IN GENERAL.—The Commissioner,  
25 and not the eligible entity, shall be at risk for

1 the provision of the catastrophic benefit under  
2 this subsection.

3 “(B) PROVISIONS RELATING TO PAYMENTS  
4 TO ELIGIBLE ENTITIES.—For provisions relat-  
5 ing to payments to eligible entities for admin-  
6 istering the catastrophic benefit under this sub-  
7 section, see section 1860H.

8 “(4) CATASTROPHIC BENEFIT NOT AVAILABLE  
9 TO CERTAIN HIGH INCOME INDIVIDUALS.—

10 “(A) IN GENERAL.—An eligible beneficiary  
11 enrolled under this part whose modified ad-  
12 justed gross income for a taxable year exceeds  
13 600 percent of the poverty line shall not be eli-  
14 gible for the catastrophic benefit under this  
15 subsection.

16 “(B) BENEFICIARY STILL ELIGIBLE FOR  
17 DISCOUNT BENEFIT.—Nothing in subparagraph  
18 (A) shall be construed as affecting the eligibility  
19 of a beneficiary described in such subparagraph  
20 for the benefits under subsection (a).

21 “(C) PROCEDURES FOR DETERMINING  
22 MODIFIED ADJUSTED GROSS INCOME.—

23 “(i) IN GENERAL.—The Commissioner  
24 shall establish procedures for determining

1 the modified adjusted gross income of eligi-  
2 ble beneficiaries enrolled under this part.

3 “(ii) CONSULTATION.—The Commis-  
4 sioner shall consult with the Secretary of  
5 the Treasury in making the determinations  
6 described in clause (i).

7 “(iii) DISCLOSURE OF INFORMA-  
8 TION.—Notwithstanding section 6103(a) of  
9 the Internal Revenue Code of 1986, the  
10 Secretary of the Treasury may, upon writ-  
11 ten request from the Commissioner, dis-  
12 close to officers and employees of the  
13 Medicare Prescription Drug Agency such  
14 return information as is necessary to make  
15 the determinations described in clause (i).  
16 Return information disclosed under the  
17 preceding sentence may be used by officers  
18 and employees of the Medicare Prescrip-  
19 tion Drug Agency only for the purposes of,  
20 and to the extent necessary in, making  
21 such determinations.

22 “(D) DEFINITION OF MODIFIED ADJUSTED  
23 GROSS INCOME.—In this paragraph, the term  
24 ‘modified adjusted gross income’ means ad-

1           justed gross income (as defined in section 62 of  
2           the Internal Revenue Code of 1986)—

3                   “(i) determined without regard to sec-  
4                   tions 135, 911, 931, and 933 of such  
5                   Code; and

6                   “(ii) increased by the amount of inter-  
7                   est received or accrued by the taxpayer  
8                   during the taxable year which is exempt  
9                   from tax under such Code.

10           “(5) ENSURING CATASTROPHIC BENEFIT IN  
11           ALL AREAS.—The Commissioner shall develop proce-  
12           dures for the provision of the catastrophic benefit  
13           under this subsection to each eligible beneficiary  
14           that resides in an area where there are no eligible  
15           entities that have been awarded a contract under  
16           this part.

17           “SELECTION OF ENTITIES TO PROVIDE PRESCRIPTION  
18                                   DRUG COVERAGE

19           “SEC. 1860G. (a) ESTABLISHMENT OF BIDDING  
20           PROCESS.—The Commissioner shall establish a process  
21           under which the Commissioner accepts bids from eligible  
22           entities and awards contracts to the entities to provide the  
23           benefits under this part to eligible beneficiaries in an area.

24           “(b) SUBMISSION OF BIDS.—Each eligible entity de-  
25           siring to enter into a contract under this part shall submit  
26           a bid to the Commissioner at such time, in such manner,

1 and accompanied by such information as the Commis-  
 2 sioner may reasonably require.

3 “(c) AWARDING OF CONTRACTS.—

4 “(1) IN GENERAL.—The Commissioner shall,  
 5 consistent with the requirements of this part and the  
 6 goal of containing medicare program costs, award at  
 7 least 2 contracts in each area, unless only 1 bidding  
 8 entity meets the terms and conditions specified by  
 9 the Commissioner under paragraph (2).

10 “(2) TERMS AND CONDITIONS.—The Commis-  
 11 sioner shall not award a contract to an eligible entity  
 12 under this section unless the Commissioner finds  
 13 that the eligible entity is in compliance with such  
 14 terms and conditions as the Commissioner shall  
 15 specify.

16 “(3) COMPARATIVE MERITS.—In determining  
 17 which of the eligible entities that submitted bids that  
 18 meet the terms and conditions specified by the Com-  
 19 missioner under paragraph (2) to award a contract,  
 20 the Commissioner shall consider the comparative  
 21 merits of each of the bids.

22 “PAYMENTS TO ELIGIBLE ENTITIES FOR ADMINISTERING  
 23 THE CATASTROPHIC BENEFIT

24 “SEC. 1860H. (a) IN GENERAL.—The Commissioner  
 25 shall establish procedures for making payments to an eligi-

1 ble entity under a contract entered into under this part  
 2 for—

3 “(1) providing covered outpatient prescription  
 4 drugs to beneficiaries eligible for the catastrophic  
 5 benefit in accordance with subsection (b); and

6 “(2) costs incurred by the entity in admin-  
 7 istering the catastrophic benefit in accordance with  
 8 subsection (c).

9 “(b) PAYMENT FOR COVERED OUTPATIENT PRE-  
 10 SCRIPTION DRUGS.—

11 “(1) IN GENERAL.—Except as provided in sub-  
 12 section (c) and subject to paragraph (2), the Com-  
 13 missioner may only pay an eligible entity for covered  
 14 outpatient drugs furnished by the eligible entity to  
 15 an eligible beneficiary enrolled with such entity  
 16 under this part that is eligible for the catastrophic  
 17 benefit under section 1860F(b).

18 “(2) LIMITATIONS.—

19 “(A) FORMULARY RESTRICTIONS.—Insofar  
 20 as an eligible entity with a contract under this  
 21 part uses a formulary, the Commissioner may  
 22 not make any payment for a covered outpatient  
 23 drug that is not included in such formulary.

24 “(B) NEGOTIATED PRICES.—The Commis-  
 25 sioner may not pay an amount for a covered

1           outpatient drug furnished to an eligible bene-  
 2           ficiary that exceeds the negotiated price (includ-  
 3           ing applicable discounts) that the beneficiary  
 4           would have been responsible for under section  
 5           1860F(a).

6           “(c) PAYMENT FOR ADMINISTRATIVE COSTS.—

7           “(1) PROCEDURES.—The procedures estab-  
 8           lished under subsection (a)(1) shall provide for pay-  
 9           ment to the eligible entity of an administrative fee  
 10          for each prescription filled by the entity for an eligi-  
 11          ble beneficiary—

12                   “(A) who is enrolled with the entity; and

13                   “(B) to whom subparagraph (A), (B), or  
 14                   (C) of section 1860F(b)(1) applies with respect  
 15                   to a covered outpatient drug.

16           “(2) AMOUNT.—The fee described in paragraph  
 17          (1) shall be—

18                   “(A) negotiated by the Commissioner; and

19                   “(B) consistent with such fees paid under  
 20                   private sector pharmaceutical benefit contracts.

21           “(d) SECONDARY PAYER PROVISIONS.—The provi-  
 22          sions of section 1862(b) shall apply to the benefits pro-  
 23          vided under this part.

24           “DETERMINATION OF INCOME LEVELS

25           “SEC. 1860I. (a) PROCEDURES.—The Commissioner  
 26          shall establish procedures for determining the income lev-

1 els of eligible beneficiaries for purposes of sections  
 2 1860E(c) and 1860F(b).

3 “(b) PERIODIC REDETERMINATIONS.—Such income  
 4 determinations shall be valid for a period (of not less than  
 5 1 year) specified by the Commissioner.

6 “APPROPRIATIONS

7 “SEC. 1860J. There are authorized to be appro-  
 8 priated from time to time, out of any moneys in the Treas-  
 9 ury not otherwise appropriated, to the Federal Supple-  
 10 mentary Medical Insurance Trust Fund established under  
 11 section 1841, an amount equal to the amount by which  
 12 the benefits and administrative costs of providing the ben-  
 13 efits under this part exceed the enrollment fees collected  
 14 under section 1860E.

15 “SUBPART 2—ESTABLISHMENT OF THE MEDICARE

16 PRESCRIPTION DRUG AGENCY

17 “MEDICARE PRESCRIPTION DRUG AGENCY

18 “SEC. 1860S. (a) ESTABLISHMENT.—There is estab-  
 19 lished, as an independent agency in the executive branch  
 20 of the Government, a Medicare Prescription Drug Agency  
 21 (in this part referred to as the ‘Agency’).

22 “(b) DUTY.—It shall be the duty of the Agency to  
 23 administer the Medicare Outpatient Prescription Drug  
 24 Discount and Security Program under subpart 1.

1 “COMMISSIONER; DEPUTY COMMISSIONER; OTHER  
2 OFFICERS

3 “SEC. 1860T. (a) COMMISSIONER OF MEDICARE  
4 PRESCRIPTION DRUGS.—

5 “(1) APPOINTMENT.—There shall be in the  
6 Agency a Commissioner of Medicare Prescription  
7 Drugs (in this subpart referred to as the ‘Commis-  
8 sioner’) who shall be appointed by the President, by  
9 and with the advice and consent of the Senate.

10 “(2) COMPENSATION.—The Commissioner shall  
11 be compensated at the rate provided for level I of  
12 the Executive Schedule.

13 “(3) TERM.—

14 “(A) IN GENERAL.—The Commissioner  
15 shall be appointed for a term of 6 years.

16 “(B) CONTINUANCE IN OFFICE.—In any  
17 case in which a successor does not take office  
18 at the end of a Commissioner’s term of office,  
19 such Commissioner may continue in office until  
20 the appointment of a successor.

21 “(C) DELAYED APPOINTMENTS.—A Com-  
22 missioner appointed to a term of office after the  
23 commencement of such term may serve under  
24 such appointment only for the remainder of  
25 such term.

1           “(D) REMOVAL.—An individual serving in  
2           the office of Commissioner may be removed  
3           from office only under a finding by the Presi-  
4           dent of neglect of duty or malfeasance in office.

5           “(4) RESPONSIBILITIES.—The Commissioner  
6           shall be responsible for the exercise of all powers  
7           and the discharge of all duties of the Agency, and  
8           shall have authority and control over all personnel  
9           and activities thereof.

10          “(5) PROMULGATION OF RULES AND REGULA-  
11          TIONS.—

12                 “(A) IN GENERAL.—The Commissioner  
13                 may prescribe such rules and regulations as the  
14                 Commissioner determines necessary or appro-  
15                 priate to carry out the functions of the Agency.

16                 “(B) RULEMAKING.—The regulations pre-  
17                 scribed by the Commissioner shall be subject to  
18                 the rulemaking procedures established under  
19                 section 553 of title 5, United States Code.

20          “(6) DELEGATION OF AUTHORITY.—

21                 “(A) IN GENERAL.—The Commissioner  
22                 may assign duties, and delegate, or authorize  
23                 successive redelegations of, authority to act and  
24                 to render decisions, to such officers and employ-

1           ees of the Agency as the Commissioner may  
2           find necessary.

3           “(B) EFFECT OF DELEGATION.—Within  
4           the limitations of such delegations, redelega-  
5           tions, or assignments, all official acts and deci-  
6           sions of such officers and employees shall have  
7           the same force and effect as though performed  
8           or rendered by the Commissioner.

9           “(7) CONSULTATION WITH SECRETARY OF  
10          HEALTH AND HUMAN SERVICES.—The Commis-  
11          sioner and the Secretary shall consult, on an ongo-  
12          ing basis, to ensure the coordination of the programs  
13          administered by the Commissioner with the pro-  
14          grams administered by the Secretary under this title  
15          and under title XIX.

16          “(b) DEPUTY COMMISSIONER OF MEDICARE PRE-  
17          SCRIPTION DRUGS.—

18                 “(1) APPOINTMENT.—There shall be in the  
19          Agency a Deputy Commissioner of Medicare Pre-  
20          scription Drugs (in this subpart referred to as the  
21          ‘Deputy Commissioner’) who shall be appointed by  
22          the President, by and with the advice and consent  
23          of the Senate.

24                 “(2) TERM.—

1           “(A) IN GENERAL.—The Deputy Commis-  
2           sioner shall be appointed for a term of 6 years.

3           “(B) CONTINUANCE IN OFFICE.—In any  
4           case in which a successor does not take office  
5           at the end of a Deputy Commissioner’s term of  
6           office, such Deputy Commissioner may continue  
7           in office until the entry upon office of such a  
8           successor.

9           “(C) DELAYED APPOINTMENT.—A Deputy  
10          Commissioner appointed to a term of office  
11          after the commencement of such term may  
12          serve under such appointment only for the re-  
13          mainder of such term.

14          “(3) COMPENSATION.—The Deputy Commis-  
15          sioner shall be compensated at the rate provided for  
16          level II of the Executive Schedule.

17          “(4) DUTIES.—

18                 “(A) IN GENERAL.—The Deputy Commis-  
19                 sioner shall perform such duties and exercise  
20                 such powers as the Commissioner shall from  
21                 time to time assign or delegate.

22                 “(B) ACTING COMMISSIONER.—The Dep-  
23                 uty Commissioner shall be Acting Commissioner  
24                 of the Agency during the absence or disability  
25                 of the Commissioner, unless the President des-

1           ignates another officer of the Government as  
2           Acting Commissioner, in the event of a vacancy  
3           in the office of the Commissioner.

4           “(c) CHIEF ACTUARY.—

5           “(1) APPOINTMENT.—

6           “(A) IN GENERAL.—There shall be in the  
7           Agency a Chief Actuary, who shall be appointed  
8           by, and in direct line of authority to, the Com-  
9           missioner.

10          “(B) QUALIFICATIONS.—The Chief Actu-  
11          ary shall be appointed from individuals who  
12          have demonstrated, by their education and ex-  
13          perience, superior expertise in the actuarial  
14          sciences.

15          “(C) DUTIES.—The Chief Actuary shall  
16          serve as the chief actuarial officer of the Agen-  
17          cy, and shall exercise such duties as are appro-  
18          priate for the office of the Chief Actuary and  
19          in accordance with professional standards of ac-  
20          tuarial independence.

21          “(2) COMPENSATION.—The Chief Actuary shall  
22          be compensated at the highest rate of basic pay for  
23          the Senior Executive Service under section 5382(b)  
24          of title 5, United States Code.

25          “ADMINISTRATIVE DUTIES OF THE COMMISSIONER

26          “SEC. 1860U. (a) PERSONNEL.—

1           “(1) IN GENERAL.—The Commissioner may  
2       employ, without regard to chapter 31 of title 5,  
3       United States Code, such officers and employees as  
4       are necessary to administer the activities to be car-  
5       ried out through the Medicare Prescription Drug  
6       Agency.

7           “(2) FLEXIBILITY WITH RESPECT TO CIVIL  
8       SERVICE LAWS.—

9           “(A) IN GENERAL.—The staff of the Medi-  
10       care Prescription Drug Agency shall be ap-  
11       pointed without regard to the provisions of title  
12       5, United States Code, governing appointments  
13       in the competitive service, and, subject to sub-  
14       paragraph (B), shall be paid without regard to  
15       the provisions of chapters 51 and 53 of such  
16       title (relating to classification and schedule pay  
17       rates).

18           “(B) MAXIMUM RATE.—In no case may  
19       the rate of compensation determined under sub-  
20       paragraph (A) exceed the rate of basic pay pay-  
21       able for level IV of the Executive Schedule  
22       under section 5315 of title 5, United States  
23       Code.

24       “(b) BUDGETARY MATTERS.—

1           “(1) SUBMISSION OF ANNUAL BUDGET.—The  
2       Commissioner shall prepare an annual budget for  
3       the Agency, which shall be submitted by the Presi-  
4       dent to Congress without revision, together with the  
5       President’s annual budget for the Agency.

6           “(2) APPROPRIATIONS REQUESTS.—

7               “(A) STAFFING AND PERSONNEL.—Appro-  
8       priations requests for staffing and personnel of  
9       the Agency shall be based upon a comprehen-  
10      sive workforce plan, which shall be established  
11      and revised from time to time by the Commis-  
12      sioner.

13           “(B) ADMINISTRATIVE EXPENSES.—Ap-  
14      propriations for administrative expenses of the  
15      Agency are authorized to be provided on a bien-  
16      nial basis.

17          “(c) SEAL OF OFFICE.—

18           “(1) IN GENERAL.—The Commissioner shall  
19      cause a Seal of Office to be made for the Agency of  
20      such design as the Commissioner shall approve.

21           “(2) JUDICIAL NOTICE.—Judicial notice shall  
22      be taken of the seal made under paragraph (1).

23          “(d) DATA EXCHANGES.—

24           “(1) DISCLOSURE OF RECORDS AND OTHER IN-  
25      FORMATION.—Notwithstanding any other provision

1 of law (including subsections (b), (o), (p), (q), (r),  
2 and (u) of section 552a of title 5, United States  
3 Code)—

4 “(A) the Secretary shall disclose to the  
5 Commissioner any record or information re-  
6 quested in writing by the Commissioner for the  
7 purpose of administering any program adminis-  
8 tered by the Commissioner, if records or infor-  
9 mation of such type were disclosed to the Ad-  
10 ministrator of the Health Care Financing Ad-  
11 ministration in the Department of Health and  
12 Human Services under applicable rules, regula-  
13 tions, and procedures in effect before the date  
14 of enactment of the Medicare Rx Drug Dis-  
15 count and Security Act of 2001; and

16 “(B) the Commissioner shall disclose to  
17 the Secretary or to any State any record or in-  
18 formation requested in writing by the Secretary  
19 to be so disclosed for the purpose of admin-  
20 istering any program administered by the Sec-  
21 retary, if records or information of such type  
22 were so disclosed under applicable rules, regula-  
23 tions, and procedures in effect before the date  
24 of enactment of the Medicare Rx Drug Dis-  
25 count and Security Act of 2001.

1           “(2) EXCHANGE OF OTHER DATA.—The Com-  
2           missioner and the Secretary shall periodically review  
3           the need for exchanges of information not referred  
4           to in paragraph (1) and shall enter into such agree-  
5           ments as may be necessary and appropriate to pro-  
6           vide information to each other or to States in order  
7           to meet the programmatic needs of the requesting  
8           agencies.

9           “(3) ROUTINE USE.—

10           “(A) IN GENERAL.—Any disclosure from a  
11           system of records (as defined in section  
12           552a(a)(5) of title 5, United States Code) pur-  
13           suant to this subsection shall be made as a rou-  
14           tine use under subsection (b)(3) of section 552a  
15           of such title (unless otherwise authorized under  
16           such section 552a).

17           “(B) COMPUTERIZED COMPARISON.—Any  
18           computerized comparison of records, including  
19           matching programs, between the Commissioner  
20           and the Secretary shall be conducted in accord-  
21           ance with subsections (o), (p), (q), (r), and (u)  
22           of section 552a of title 5, United States Code.

23           “(4) TIMELY ACTION.—The Commissioner and  
24           the Secretary shall each ensure that timely action is  
25           taken to establish any necessary routine uses for dis-

1 closures required under paragraph (1) or agreed to  
2 under paragraph (2).

3 “MEDICARE COMPETITION AND PRESCRIPTION DRUG

4 ADVISORY BOARD

5 “SEC. 1860V. (a) ESTABLISHMENT OF BOARD.—

6 There is established a Medicare Prescription Drug Advi-  
7 sory Board (in this section referred to as the ‘Board’).

8 “(b) ADVICE ON POLICIES; REPORTS.—

9 “(1) ADVICE ON POLICIES.—On and after the  
10 date the Commissioner takes office, the Board shall  
11 advise the Commissioner on policies relating to the  
12 Medicare Outpatient Prescription Drug Discount  
13 and Security Program under subpart 1.

14 “(2) REPORTS.—

15 “(A) IN GENERAL.—With respect to mat-  
16 ters of the administration of subpart 1, the  
17 Board shall submit to Congress and to the  
18 Commissioner of Medicare Prescription Drugs  
19 such reports as the Board determines appro-  
20 priate. Each such report may contain such rec-  
21 ommendations as the Board determines appro-  
22 priate for legislative or administrative changes  
23 to improve the administration of such subpart.  
24 Each such report shall be published in the Fed-  
25 eral Register.

1           “(B) MAINTAINING INDEPENDENCE OF  
2           BOARD.—The Board shall directly submit to  
3           Congress reports required under subparagraph  
4           (A). No officer or agency of the United States  
5           may require the Board to submit to any officer  
6           or agency of the United States for approval,  
7           comments, or review, prior to the submission to  
8           Congress of such reports.

9           “(c) STRUCTURE AND MEMBERSHIP OF THE  
10          BOARD.—

11           “(1) MEMBERSHIP.—The Board shall be com-  
12          posed of 7 members who shall be appointed as fol-  
13          lows:

14           “(A) PRESIDENTIAL APPOINTMENTS.—

15           “(i) IN GENERAL.—Three members  
16           shall be appointed by the President, by and  
17           with the advice and consent of the Senate.

18           “(ii) LIMITATION.—Not more than 2  
19           such members may be from the same polit-  
20           ical party.

21           “(B) SENATORIAL APPOINTMENTS.—Two  
22           members (each member from a different polit-  
23           ical party) shall be appointed by the President  
24           pro tempore of the Senate with the advice of

1 the Chairman and the Ranking Minority Mem-  
2 ber of the Committee on Finance of the Senate.

3 “(C) CONGRESSIONAL APPOINTMENTS.—

4 Two members (each member from a different  
5 political party) shall be appointed by the Speak-  
6 er of the House of Representatives, with the ad-  
7 vice of the Chairman and the Ranking Minority  
8 Member of the Committee on Ways and Means  
9 of the House of Representatives.

10 “(2) QUALIFICATIONS.—The members shall be  
11 chosen on the basis of their integrity, impartiality,  
12 and good judgment, and shall be individuals who  
13 are, by reason of their education, experience, and at-  
14 tainments, exceptionally qualified to perform the du-  
15 ties of members of the Board.

16 “(d) TERMS OF APPOINTMENT.—

17 “(1) IN GENERAL.—Subject to paragraph (2),  
18 each member of the Board shall serve for a term of  
19 6 years.

20 “(2) CONTINUANCE IN OFFICE AND STAGGERED  
21 TERMS.—

22 “(A) CONTINUANCE IN OFFICE.—A mem-  
23 ber appointed to a term of office after the com-  
24 mencement of such term may serve under such

1           appointment only for the remainder of such  
2           term.

3           “(B) STAGGERED TERMS.—The terms of  
4           service of the members initially appointed under  
5           this section shall begin on January 1, 2002,  
6           and expire as follows:

7                   “(i) PRESIDENTIAL APPOINTMENTS.—  
8           The terms of service of the members ini-  
9           tially appointed by the President shall ex-  
10          pire as designated by the President at the  
11          time of nomination, 1 each at the end of—

12                   “(I) 2 years;

13                   “(II) 4 years; and

14                   “(III) 6 years.

15                   “(ii) SENATORIAL APPOINTMENTS.—  
16          The terms of service of members initially  
17          appointed by the President pro tempore of  
18          the Senate shall expire as designated by  
19          the President pro tempore of the Senate at  
20          the time of nomination, 1 each at the end  
21          of—

22                   “(I) 3 years; and

23                   “(II) 6 years.

24                   “(iii) CONGRESSIONAL APPOINT-  
25          MENTS.—The terms of service of members

1 initially appointed by the Speaker of the  
2 House of Representatives shall expire as  
3 designated by the Speaker of the House of  
4 Representatives at the time of nomination,  
5 1 each at the end of—

6 “(I) 4 years; and

7 “(II) 5 years.

8 “(C) REAPPOINTMENTS.—Any person ap-  
9 pointed as a member of the Board may not  
10 serve for more than 8 years.

11 “(D) VACANCIES.—Any member appointed  
12 to fill a vacancy occurring before the expiration  
13 of the term for which the member’s predecessor  
14 was appointed shall be appointed only for the  
15 remainder of that term. A member may serve  
16 after the expiration of that member’s term until  
17 a successor has taken office. A vacancy in the  
18 Board shall be filled in the manner in which the  
19 original appointment was made.

20 “(e) CHAIRPERSON.—A member of the Board shall  
21 be designated by the President to serve as Chairperson  
22 for a term of 4 years, coincident with the term of the  
23 President, or until the designation of a successor.

24 “(f) EXPENSES AND PER DIEM.—Members of the  
25 Board shall serve without compensation, except that, while

1 serving on business of the Board away from their homes  
2 or regular places of business, members may be allowed  
3 travel expenses, including per diem in lieu of subsistence,  
4 as authorized by section 5703 of title 5, United States  
5 Code, for persons in the Government employed intermit-  
6 tently.

7 “(g) MEETING.—

8 “(1) IN GENERAL.—The Board shall meet at  
9 the call of the Chairperson (in consultation with the  
10 other members of the Board) not less than 4 times  
11 each year to consider a specific agenda of issues, as  
12 determined by the Chairperson in consultation with  
13 the other members of the Board.

14 “(2) QUORUM.—Four members of the Board  
15 (not more than 3 of whom may be of the same polit-  
16 ical party) shall constitute a quorum for purposes of  
17 conducting business.

18 “(h) FEDERAL ADVISORY COMMITTEE ACT.—The  
19 Board shall be exempt from the provisions of the Federal  
20 Advisory Committee Act (5 U.S.C. App.).

21 “(i) PERSONNEL.—

22 “(1) STAFF DIRECTOR.—The Board shall, with-  
23 out regard to the provisions of title 5, United States  
24 Code, relating to the competitive service, appoint a  
25 Staff Director who shall be paid at a rate equivalent

1 to a rate established for the Senior Executive Serv-  
2 ice under section 5382 of title 5, United States  
3 Code.

4 “(2) STAFF.—

5 “(A) IN GENERAL.—The Board may em-  
6 ploy, without regard to chapter 31 of title 5,  
7 United States Code, such officers and employ-  
8 ees as are necessary to administer the activities  
9 to be carried out by the Board.

10 “(B) FLEXIBILITY WITH RESPECT TO  
11 CIVIL SERVICE LAWS.—

12 “(i) IN GENERAL.—The staff of the  
13 Board shall be appointed without regard to  
14 the provisions of title 5, United States  
15 Code, governing appointments in the com-  
16 petitive service, and, subject to clause (ii),  
17 shall be paid without regard to the provi-  
18 sions of chapters 51 and 53 of such title  
19 (relating to classification and schedule pay  
20 rates).

21 “(ii) MAXIMUM RATE.—In no case  
22 may the rate of compensation determined  
23 under clause (i) exceed the rate of basic  
24 pay payable for level IV of the Executive

1                   Schedule under section 5315 of title 5,  
2                   United States Code.

3           “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated, out of the Federal Sup-  
5 plemental Medical Insurance Trust Fund established  
6 under section 1841, and the general fund of the Treasury,  
7 such sums as are necessary to carry out the purposes of  
8 this section.”.

9           (b) CONFORMING REFERENCES TO PREVIOUS PART  
10 D.—

11           (1) IN GENERAL.—Any reference in law (in ef-  
12 fect before the date of enactment of this Act) to part  
13 D of title XVIII of the Social Security Act is deemed  
14 a reference to part E of such title (as in effect after  
15 such date).

16           (2) SECRETARIAL SUBMISSION OF LEGISLATIVE  
17 PROPOSAL.—Not later than 6 months after the date  
18 of enactment of this section, the Secretary of Health  
19 and Human Services shall submit to the appropriate  
20 committees of Congress a legislative proposal pro-  
21 viding for such technical and conforming amend-  
22 ments in the law as are required by the provisions  
23 of this section.

24           (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendment made by  
2           subsection (a) shall take effect on the date of enact-  
3           ment of this Act.

4           (2) TIMING OF INITIAL APPOINTMENTS.—The  
5           Commissioner and Deputy Commissioner of Medi-  
6           care Prescription Drugs may not be appointed be-  
7           fore March 1, 2002.

8   **SEC. 3. COMMISSIONER AS MEMBER OF THE BOARD OF**  
9                           **TRUSTEES OF THE MEDICARE TRUST FUNDS.**

10          (a) IN GENERAL.—Section 1841(b) of the Social Se-  
11       curity Act (42 U.S.C. 1395t(b)) is amended by striking  
12       “and the Secretary of Health and Human Services, all ex  
13       officio,” and inserting “, the Secretary of Health and  
14       Human Services, and the Commissioner of Medicare Pre-  
15       scription Drugs, all ex officio,”.

16          (b) EFFECTIVE DATE.—The amendment made by  
17       this subsection shall take effect on March 1, 2002.

18   **SEC. 4. EXCLUSION OF PART D COSTS FROM DETERMINA-**  
19                           **TION OF PART B MONTHLY PREMIUM.**

20       Section 1839(g) of the Social Security Act (42 U.S.C.  
21       1395r(g)) is amended—

22           (1) by striking “attributable to the application  
23       of section” and inserting “attributable to—  
24       “(1) the application of section”;

1           (2) by striking the period and inserting “;  
2           and”; and

3           (3) by adding at the end the following new  
4           paragraph:

5           “(2) the Voluntary Medicare Outpatient Pre-  
6           scription Drug Discount and Security Program  
7           under part D.”.

8   **SEC. 5. MEDIGAP REVISIONS.**

9           Section 1882 of the Social Security Act (42 U.S.C.  
10   1395ss) is amended by adding at the end the following  
11   new subsection:

12          “(v) MODERNIZATION OF MEDICARE SUPPLEMENTAL  
13   POLICIES.—

14               “(1) PROMULGATION OF MODEL REGULA-  
15   TION.—

16                   “(A) NAIC MODEL REGULATION.—If,  
17                   within 9 months after the date of enactment of  
18                   the Medicare Rx Drug Discount and Security  
19                   Act of 2001, the National Association of Insur-  
20                   ance Commissioners (in this subsection referred  
21                   to as the ‘NAIC’) changes the 1991 NAIC  
22                   Model Regulation (described in subsection (p))  
23                   to revise the benefit package classified as ‘J’  
24                   under the standards established by subsection  
25                   (p)(2) (including the benefit package classified

1 as ‘J’ with a high deductible feature, as de-  
2 scribed in subsection (p)(11)) so that—

3 “(i) the coverage for outpatient pre-  
4 scription drugs available under such ben-  
5 efit package is replaced with coverage for  
6 outpatient prescription drugs that com-  
7 plements but does not duplicate the bene-  
8 fits for outpatient prescription drugs that  
9 beneficiaries are otherwise entitled to  
10 under this title;

11 “(ii) a uniform format is used in the  
12 policy with respect to such revised benefits;  
13 and

14 “(iii) such revised standards meet any  
15 additional requirements imposed by the  
16 Medicare Rx Drug Discount and Security  
17 Act of 2001;

18 subsection (g)(2)(A) shall be applied in each  
19 State, effective for policies issued to policy hold-  
20 ers on and after January 1, 2003, as if the ref-  
21 erence to the Model Regulation adopted on  
22 June 6, 1979, were a reference to the 1991  
23 NAIC Model Regulation as changed under this  
24 subparagraph (such changed regulation referred

1 to in this section as the ‘2003 NAIC Model  
2 Regulation’).

3 “(B) REGULATION BY THE SECRETARY.—  
4 If the NAIC does not make the changes in the  
5 1991 NAIC Model Regulation within the 9-  
6 month period specified in subparagraph (A), the  
7 Secretary shall promulgate, not later than 9  
8 months after the end of such period, a regula-  
9 tion and subsection (g)(2)(A) shall be applied in  
10 each State, effective for policies issued to policy  
11 holders on and after January 1, 2003, as if the  
12 reference to the Model Regulation adopted on  
13 June 6, 1979, were a reference to the 1991  
14 NAIC Model Regulation as changed by the Sec-  
15 retary under this subparagraph (such changed  
16 regulation referred to in this section as the  
17 ‘2003 Federal Regulation’).

18 “(C) CONSULTATION WITH WORKING  
19 GROUP.—In promulgating standards under this  
20 paragraph, the NAIC or Secretary shall consult  
21 with a working group similar to the working  
22 group described in subsection (p)(1)(D).

23 “(D) MODIFICATION OF STANDARDS IF  
24 MEDICARE BENEFITS CHANGE.—If benefits  
25 under part D of this title are changed and the

1 Secretary determines, in consultation with the  
2 NAIC, that changes in the 2003 NAIC Model  
3 Regulation or 2003 Federal Regulation are  
4 needed to reflect such changes, the preceding  
5 provisions of this paragraph shall apply to the  
6 modification of standards previously established  
7 in the same manner as they applied to the  
8 original establishment of such standards.

9 “(2) CONSTRUCTION OF BENEFITS IN OTHER  
10 MEDICARE SUPPLEMENTAL POLICIES.—Nothing in  
11 the benefit packages classified as ‘A’ through ‘I’  
12 under the standards established by subsection (p)(2)  
13 (including the benefit package classified as ‘F’ with  
14 a high deductible feature, as described in subsection  
15 (p)(11)) shall be construed as providing coverage for  
16 benefits for which payment may be made under part  
17 D.

18 “(3) APPLICATION OF PROVISIONS AND CON-  
19 FORMING REFERENCES.—

20 “(A) APPLICATION OF PROVISIONS.—The  
21 provisions of paragraphs (4) through (10) of  
22 subsection (p) shall apply under this section,  
23 except that—

24 “(i) any reference to the model regu-  
25 lation applicable under that subsection

1           shall be deemed to be a reference to the  
2           applicable 2003 NAIC Model Regulation or  
3           2003 Federal Regulation; and

4           “(ii) any reference to a date under  
5           such paragraphs of subsection (p) shall be  
6           deemed to be a reference to the appro-  
7           priate date under this subsection.

8           “(B) OTHER REFERENCES.—Any reference  
9           to a provision of subsection (p) or a date appli-  
10          cable under such subsection shall also be con-  
11          sidered to be a reference to the appropriate pro-  
12          vision or date under this subsection.”.

○